

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIUS DARNELL ROBERTS,

Defendant.

No. CR-02-0282-FVS

ORDER DENYING DEFENDANT'S
MOTION FOR REDUCTION OF
SENTENCE

THIS MATTER comes before the Court on Defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). (ECF No. 196). Assistant United States Attorney Stephanie Van Marter represents the United States, and Defendant is represented by Matthew A. Campbell.

BACKGROUND

On November 19, 2002, an indictment was returned against Defendant charging him with conspiracy to distribute cocaine base (Count 1), distribution of cocaine base (Count 2), possession with intent to distribute more than 50 grams of cocaine base (Count 3), and felon in possession of a firearm (Count 4). (ECF No. 1). On December 16, 2003, Defendant entered a guilty plea to counts three and four of the indictment. (ECF No. 59). Defendant was categorized as a career offender, and it was determined that Defendant's total offense level was 34 and his criminal history category was VI for a guideline range of 262 to 327 months. Defendant was sentenced on May 4, 2004, to 262 months incarceration. The Ninth Circuit affirmed the sentence.

1 On December 29, 2008, Defendant filed a motion pursuant to 28
2 U.S.C. § 2255. (ECF No. 114). Based on a change in case law, the
3 Government agreed that Defendant should no longer be categorized as a
4 career offender. Defendant's total offense level was determined to be
5 31 and his criminal history category was reduced to V for a guideline
6 range of 168 to 210 months. On December 18, 2009, this Court re-
7 sentenced Defendant to 168 months incarceration. (ECF No. 168). The
8 Ninth Circuit upheld the new sentence. Defendant's anticipated
9 release date is January 18, 2015. (ECF No. 196 at 2).

10 **DISCUSSION**

11 Defendant requests a reduction of sentence pursuant to 18 U.S.C.
12 § 3582(c)(2) based upon the United States Sentencing Commission's
13 Amendment 750 which has changed the Drug Quantity Table for offenses
14 involving cocaine base (crack).

15 Effective November 1, 2011, U.S.S.G. § 2D1.1 was amended to
16 generally reduce the base offense level for crack cocaine based upon
17 changes made to the ratio between powder cocaine and crack cocaine.
18 The amendment was made retroactive by having it included in the list
19 of retroactive amendments in U.S.S.G. § 1B1.10. See U.S.S.G. App. C,
20 Amend. 750. The Court is to determine the amended guideline range
21 that would have been applicable to Defendant if the amendment to the
22 guideline had been in effect at the time Defendant was sentenced.
23 U.S.S.G. § 1B1.10(b)(1).

24 Counsel for Defendant argues that, based on the retroactive
25 amendment to the crack cocaine guidelines, Defendant's Total Adjusted
26 Offense Level should be reduced from 31 to 29. (Ct. Rec. 196 at 4).

1 He asserts that with this reduction, and based on a Criminal History
2 Category of V, Defendant's amended guideline range would be 140 to 175
3 months, as opposed to the prior range of 168 to 210. *Id.* Counsel for
4 Defendant requests that Defendant be given the minimum term available
5 under the amended guideline range (140 months), a 28-month reduction
6 to his current sentence. *Id.*

7 The Government filed a response objecting to the motion for
8 reduction of sentence. (ECF No. 198). Although the Government agrees
9 that Defendant's applicable guideline range is lowered to 140 to 175
10 months based on the new amendment to the crack cocaine guidelines,
11 Defendant's sentence of 168 months still falls within that range.
12 Therefore, the Government asserts that the Court is not required to
13 modify Defendant's sentence. The Government argues that based upon
14 the record before the Court, Defendant's sentence of 168 months
15 remains appropriate under the totality of the circumstances in this
16 case. (ECF No. 198 at 4).

17 The Court has reviewed the record, including the recent filings
18 by both parties and the October 26, 2009 revised pre-sentence
19 investigation report (ECF No. 149). Based on the retroactive
20 amendment to the crack cocaine guidelines, Defendant's Total Adjusted
21 Offense Level should be reduced from 31 to 29. With this reduction,
22 and based on a Criminal History Category of V, Defendant's amended
23 guideline range is 140 to 175 months. This new guideline range is not
24 contested. However, given that Defendant's current sentence of 168
25 months still falls within the new guideline range, Defendant is not
26 entitled to an automatic modification of his sentence.

1 Defendant, age 34, was born in Victorville, California. His
2 parents divorced in 1985. After the divorce, Defendant lived more
3 often with his father than his mother. It does not appear that
4 Defendant is married, but he has two minor children from separate
5 romantic relationships. Defendant began drinking alcohol at age 8.
6 He first tried illicit substances at age 16, beginning with marijuana.
7 He used marijuana daily and, at the time of his arrest, was smoking
8 six to eight joints per day. He first tried cocaine at age 17 and
9 used cocaine once or twice every other day prior to his arrest. At
10 the time of his arrest, Defendant was a confirmed gang member.

11 Defendant's arrest resulted from his possession of a substantial
12 amount of cocaine base which he was selling with the aid of another
13 individual. He indicated he committed the offense in order to support
14 his own drug habit. Defendant admitted he supported himself by
15 "hustling and selling drugs." At the time of his arrest, Defendant
16 possessed a firearm with an obliterated serial number. He also
17 resisted his arrest and fought with officers.

18 Defendant has a lengthy criminal history that demonstrates a
19 consistent pattern of violence against his significant others as well
20 as a prior drug-related felony. He has served several prior periods
21 of incarceration. He also has a juvenile rape adjudication for which
22 he served time in a juvenile institution.

23 Defendant should be commended for earning his GED and pursuing
24 other educational opportunities while incarcerated. However,
25 Defendant has also had two infractions, which were not minimal,
26 resulting in sanctions.

S/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge